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4 UNITED STATES DISTRICT COURT
5 Northern District of California
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7 SHANNON O. MURPHY,

8 Plaintiff(s),

No. C 09-03113 MEJ

9 v.

10 U.S. POSTAL SERVICE,

**ORDER FOR CLERK OF COURT TO
REASSIGN CASE**

11 Defendant(s).
12 _____/

REPORT & RECOMMENDATION

13 On July 9, 2009, Plaintiff Shannon Murphy filed the above-captioned complaint, as well as
14 an application to proceed in forma pauperis. On July 23, 2009, the Court ordered Plaintiff to either
15 consent or decline magistrate jurisdiction by August 13, 2009. (Dkt. #4.) Because Plaintiff failed to
16 comply with this deadline, the Court again ordered Plaintiff to consent or decline, with a new
17 deadline of September 3, 2009. (Dkt. #5.) Plaintiff failed to respond. Based on Plaintiff's inaction,
18 the Court ordered Plaintiff to show cause why this case should not be dismissed for failure to
19 prosecute and comply with court deadlines. The Court ordered Plaintiff to file a declaration by
20 October 1, 2009, and scheduled an order to show cause hearing on October 8, 2009. (Dkt. #6.)

21 On October 8, 2009, the Court held an order to show cause hearing. Plaintiff made no
22 appearance at the hearing and failed to file a declaration by the October 1 deadline. Based on this
23 procedural history, the Court finds it appropriate to dismiss this case pursuant to Federal Rule of
24 Civil Procedure 41(b). Under Rule 41(b), failure to comply with a court order can warrant
25 dismissal. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). In “determining whether to
26 dismiss a case for failure to comply with a court order, the district court must weigh five factors
27 including ‘(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
28 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring

1 disposition of cases on their merits; and (5) the availability of less drastic alternatives.” *Id.* at 1260-
2 61 (quoting *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986)). Here, Plaintiff failed to
3 comply with Court orders and deadlines, failed to respond to the order to show cause, failed to make
4 an appearance at the osc hearing, and has made no appearance in this matter since filing the
5 complaint. Thus, the Court finds that the *Ferdik* factors weigh in favor of dismissal.

6 Accordingly, because Plaintiff has yet to consent to the undersigned's jurisdiction, the Court
7 hereby ORDERS the Clerk of Court to reassign this case to a district court judge. The undersigned
8 RECOMMENDS that the newly-assigned judge dismiss this case for failure to prosecute and failure
9 to comply with the Court's deadlines and orders.

10 Pursuant to Federal Rule of Civil Procedure 72, any party may serve and file objections to
11 this Report and Recommendation within 10 days after being served.

12 **IT IS SO ORDERED AND RECOMMENDED.**

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14 Dated: October 8, 2009

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16 Maria-Elena James
17 Chief United States Magistrate Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SHANNON O. MURPHY,

Plaintiff,

v.

U.S.POSTAL SERVICE,

Defendant.

Case Number: 09-03113 MEJ

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 8, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Shannon O. Murphy
General Delivery
Richmond, CA 94530

Shannon O. Murphy
General Delivery
Richmond, CA 94801

Dated: October 8, 2009

Richard W. Wieking, Clerk
By: Brenda Tolbert, Deputy Clerk